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Supreme Court of the United States

OCTOBER TERM, 1963

No. 182

NEWBERRY MILLS, INC., PETITIONER,

versus

UNITED TEXTILE WORKERS OF AMERICA, AFL-CIO, LOCAL UNION NO. 120, RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LAW, KIRKLAND & AARON
By: THEODORE W. LAW, JR.

The State Printing Co.

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QUESTIONS INVOLVED

Is the Respondent entitled to the relief granted by the U. S. District Court for the Western District of South Carolina and affirmed by the United States Court of Appeals for the Fourth Circuit. The granting of said relief being based on the admitted fact that "as soon as the Respondent was apprised of this situation every effort was made to terminate this unauthorized strike and said strike was terminated within a reasonable time and all employees returned to their proper jobs" and that the pertinent provisions of the Contract described were as follows:

The Company's answer admitted the material allegations of the complaint, but asserted that the conduct of the eighteen (18) employees violated the "no-strike clause" and banned the union from seeking to compel arbitration for their benefit.

The Company and the Union moved for summary judgment on the Union's Complaint. These motions came before the Honorable J. Robert Martin, Jr., at Greenwood on December 7, 1961. Arguments on both motions were by agreement submitted on briefs without oral argument.

On March 2, 1962, the Honorable J. Robert Martin, Jr. filed his Findings of Fact, Conclusions of Law and Order which granted the Union's motion for Summary Judgment on the Complaint and denied the Company's motion for Summary Judgment on the Complaint. This Order was affirmed by the United States Court of Appeal for the Fourth Circuit by its Opinion dated March 6, 1963.

COUNTER STATEMENT OF THE FACTS

That on or about June 9, 1960 certain persons employed by Newberry Mills, Inc., the Appellant, refused to report for work. That this action began with the third shift of the mill, spread to other shifts and eventually involved most of the several hundred employees of the mill. This work stoppage was given the term, "wildcat strike" because it was not authorized by the union, the Appellee herein, came about spontaneously and spread because of general dissatisfaction of the employees with their working conditions.

The facts which gave rise to this case cannot be more adequately stated than is done by Mr. Radford Cope, Administrative Representative for the United Textile Workers of America in an Affidavit given in support of Appellee's Motion for Summary Judgment, which was granted by the district court. The affidavit is here quoted:

> "PERSONALLY appeared before the undersigned Notary Public for South Carolina, duly authorized by

law to administer oaths, RADFORD COPE, who being duly sworn, deposes and says:

My name is Radford Cope. I reside at Newberry, South Carolina. I am Administrative Representative for the United Textile Workers of America. As such representative, I participated in and represented the union in connection with the handling of the various grievances outlined in the Complaint in this action.

Although, as outlined in the Complaint in this action, the contract between the union and Newberry Mills provides that in the event grievances cannot be settled through administrative procedures, the grievances shall be referred to an arbitrator, the Newberry Mills management has refused to go through the various steps in the grievance procedure and has refused to arbitrate any of the grievances outlined in the Complaint.

This action by the management of Newberry Mills has been entirely arbitrary and in total disregard of the provisions of the contract; the alleged excuse being that these individuals took part in a wildcat strike which took place prior to the time these grievances arose. Although it is admitted that such a strike did occur, the union, as such, had nothing whatsoever to do with this labor disturbance.

Upon being notified that certain operatives had left the job and formed picket lines, the union immediately, as required by its contract, notified these individuals that such conduct had not been authorized by the union and called upon them to return to their jobs immediately.

In due time, the labor disturbance caused by these operatives was terminated and the mill resumed full time operations.

The grievances complained about by the individuals listed in the Complaint in this action arose after all hands had returned to work.

The union, as representatives of the individual members involved has made every effort to comply with the terms of the grievance procedure but has been balked in each instance by the adamant refusal of the mill management to comply with the terms of its contract.

Numerous arbitrations in cases of this type have been decided both ways: some in favor of the company's position and some in favor of the union's position. There have been instances of reinstatement in the Newberry plant through whose operations this grievance arose and there have likewise been instances in this plant in which the company's action in discharge or discipline of employees has been upheld by the arbitrator. In every instance in which a grievance has arisen, the union feeling itself firmly bound by the terms of its contract has proceeded with the steps for resolving grievances and agreed to arbitration where necessary.

There have been other instances since these grievances arose in which the company has complied with the terms of the contract and proceeded to arbitration. There have been still others in which the company has again arbitrarily refused to follow the procedure outlined in the contract.

The company has acted high-handedly and arbitrarily in this matter and in other matters for the sole purpose of bringing the union into ill repute among the company's employees in Newberry by demonstrating to the rank and file members thereof that the company will abide by the terms of the contract only when and in so far as it sees fit to do so with the result that so far as the rank and file members are concerned the contract is worthless.

This affidavit is given for the purpose of being used in the above styled and numbered case and particularly in the support of the Plaintiff's Motion for Summary Judgment in this matter."

Under the foregoing facts; the Company and the Union both made Motions for Summary Judgment. The Company's motion seeking to have the Complaint dismissed and the Union's Motion seeking to compel the company to arbitrate the discharges.

The Company's Motion was denied and the Union's Motion was granted. This Order was affirmed by the United States Court of Appeals for the Fourth Circuit.

ARGUMENT

In this case, the District Court has held that to enter into the question of the degree of culpability of the various individuals involved would be to enter into the merits of the grievances about which the Union complains. That view has been upheld by the United States Court of Appeals for the Fourth Circuit in affirming the order of the District Court.

This view is undoubtedly correct in that the culpability of the various individuals, if any, is in varying degrees and that in the case of at least two of the individuals involved, there could be none, since they were on leave throughout the period of the disturbance and not even in the City of Newberry.

This Court has decided that the function of the courts is narrowly limited in suits under Section 301, to compel arbitration.

In this connection, attention is invited to the language of the Court in *Steelworkers v. American Manufacturing Company*, 363 U.S. 564, 4 L. Ed. 2d. 1403, 805 Ct. 1343, 40 Labor Cases 66, 628, where the following language is used:

> "... the agreement is to submit all grievances to arbitration, not merely those that a court may deem to be meritorious.—The question is not whether in the mind of a court there is equity in the claim.
>
> Arbitration is a stabilizing influence only as it serves as a vehicle for handling every and all disputes that arise under the agreement.

The collective agreement calls for the submission of grievances in the categories which it describes irrespective of whether a court may deem them to be meritorious. In our role of developing a meaningful body of law to govern the interpretation and enforcement of collective bargaining agreements, we think special heed should be given to the context in which collective bargaining agreements are negotiated and the purpose which they are intended to serve. See *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 468. The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment when it was his judgment and all that it connotes that was bargained for.

The courts therefore have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support in the claim. The agreement is to submit all grievances to arbitration, not merely those the court will deem meritorious. The processing of even frivolous claims may have therapeutic value which those who are not a part of the plant environment may be quite unaware."

The language of this contract in regard to the arbitration of grievances is very broad and there is nowhere any indication that it was ever the intention of the parties to exclude grievances which might arise out of an unauthorized strike, although it is quite apparent that the parties foresaw the possibility of such a strike and, included in the

contract a provision absolving the Union from damages which might be caused by such a strike.

The no strike agreement in this contract imposes on the union only the duty not to authorize a strike and there is nowhere any indication that the agreement to arbitrate should be abrogated by an unauthorized strike.

The parties to this contract are the union and the company and under its terms, the Union has a right to have grievances of its members presented by it, the Union, arbitrated.

The eighteen persons whose grievances the company refused to arbitrate were caught up in a labor disturbance which involved the vast majority of the employees of the company. This strike may have been and probably was the result of unfair labor practices on the part of the company.

There was no evidence before the district court which would permit a determination on such a question. That question was for the arbitrator. Likewise, there was no evidence before the court by which it could determine whether or not the conduct of the eighteen here involved was more heinous or less so than that of the many others who in like circumstances were involved in the work stoppage at Petitioner's mill and were not discharged. That, too, was a matter to be determined by the arbitrator.

All of the ramifications of this labor dispute were not before the lower courts and rightly should not have been. They are matters for the arbitrator.

The Petitioner seeks to have the court rule on the merits of this case, substituting its own interpretation of the contract and the facts as justification for its breach of the contract to arbitrate.

In the instant case the work stoppage involving most of the workers of the Petitioner had been terminated by the efforts of the union, the Respondent, and all operatives were ordered to return to work. The mill had resumed operations and the eighteen persons here involved stood ready and willing to report to work. They were prevented from

doing so after the work stoppage as such was over by the fact of their discharge by the company. There is in this case redress which an arbitrator may order, should he determine that the discharges were unjustified.

The Respondent contends that Petitioner's argument is in fact on the evidence upon which it would have relief before an arbitrator, if these grievances had in fact been arbitrated, and that therefore, Petitioner is wide of the mark since the merit of these discharges was not before the lower court.

Respondent further contends that the questions before the lower courts were, as to the existence of a contract (admitted), the terms of the contract (admitted) and whether the Petitioner should be ordered to comply with the terms of the contract as admitted. The district court found that it should and so ordered, which order has been affirmed by the United States Court of Appeals for the Fourth Circuit.

CONCLUSION

The United States District Court for the Western District of South Carolina and the United States Court of Appeals for the Fourth Circuit in well reasoned opinions have held that the facts of this case bring it within the principles heretofore enunciated by this court which compel arbitration. It is therefore submitted that in the light of the foregoing, Certiorari should be denied by this Court.

Respectfully submitted,

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